

The Honorable Tana Lin

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

DENNIS E. DAVIS, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

SYMETRA LIFE INSURANCE COMPANY, a  
Washington corporation,

Defendant.

NO. 2:21-cv-00533-TL

**STIPULATED PROTECTIVE ORDER**

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order (“Order”). The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and that a Party or third-party reasonably, in good faith believes contains any confidential research, development, trade secret, or commercial information, or any other personal information of any Party or a Party’s customer, provided that the Party or third-party has made efforts to maintain confidentiality that are reasonable under the circumstances, whether the CONFIDENTIAL Material is: a document, electronically stored information (“ESI”), or other written material or image; information contained in a document, ESI, or other material; information revealed during a deposition; information revealed in an interrogatory, answer, or written responses to discovery; information revealed during a meet and confer, or otherwise in connection with formal or informal discovery.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover the following information: (a) any information that is in the public domain at the time of disclosure as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Confidential Material at trial shall be governed by a separate agreement or order.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use Confidential Material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential Material may be disclosed only to  
5 the categories of persons and under the conditions described in this agreement. Confidential  
6 Material must be stored and maintained by a receiving party at a location and in a secure manner  
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of "CONFIDENTIAL" Material. Unless otherwise ordered by the court  
9 or permitted in writing by the designating party, a receiving party may disclose any Confidential  
10 Material only to:

11 (a) the receiving party's counsel of record in this action (including in house  
12 counsel), as well as employees of counsel to whom it is reasonably necessary to disclose the  
13 information for this litigation;

14 (b) the officers, directors, and employees of the receiving party to whom  
15 disclosure is reasonably necessary for this litigation, unless the parties agree that a particular  
16 document or material produced is designated "ATTORNEY'S EYES ONLY";

17 (c) experts and consultants to whom disclosure is reasonably necessary for this  
18 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff, professional  
20 jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably  
21 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be  
22 Bound" (Exhibit A);

23 (e) copy or imaging services retained by counsel to assist in the duplication of  
24 confidential material, provided that counsel for the party retaining the copy or imaging service  
25 instructs the service not to disclose any confidential material to third parties and to immediately  
26 return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material will be designated accordingly and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) law enforcement officers, and/or other government agencies, as permitted or required by applicable state and federal law;

(i) a jury involved in litigation concerning the claims and any defenses to any claims in this lawsuit;

(j) anyone as otherwise required by law;

(k) as authorized by the Parties’ specifically.

4.3 Filing Confidential Material. Before filing Confidential Material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with

the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the designation "CONFIDENTIAL" and, when appropriate, "ATTORNEY'S EYES ONLY" to each page that contains Confidential Material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: Unless all parties agree on the record at the time the deposition is taken, all deposition testimony taken in this case shall be treated as Confidential Material until the expiration of the following: No later than the fourteenth day after the transcript is delivered to any party or the witness, and in no event later than 60 days after the testimony was given, a party may serve a Notice of Designation to all parties of record as to specific portions of the testimony that are designated as Confidential Material, and thereafter only those portions identified in the Notice of Designation shall be protected by the terms of this Order. The failure to serve a timely Notice of Designation shall waive any designation of testimony taken in that deposition as Confidential Material, unless otherwise ordered by the Court. If a party or non-party desires to protect Confidential Material at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the designation "CONFIDENTIAL" and, when appropriate, "ATTORNEY'S EYES ONLY". If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3       6.2   Meet and Confer. The parties must make every attempt to resolve any dispute  
4 regarding confidential designations without court involvement. Any motion regarding confidential  
5 designations or for a protective order must include a certification, in the motion or in a declaration  
6 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
7 affected parties in an effort to resolve the dispute without court action. The certification must list  
8 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
9 to-face meeting or a telephone conference.

10       The Challenging Party shall initiate the dispute resolution process by providing written  
11 notice of each designation it is challenging and describing the basis for each challenge. To avoid  
12 ambiguity as to whether a challenge has been made, the written notice must recite that the  
13 challenge to confidentiality is being made in accordance with this specific paragraph of the  
14 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin  
15 the process by conferring directly (in voice to voice dialogue; other forms of communication are  
16 not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party  
17 must explain the basis for its belief that the confidentiality designation was not proper and must  
18 give the Designating Party a reasonable opportunity to review the designated material, to  
19 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for  
20 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process  
21 only if it has engaged in this meet and confer process first or establishes that the Designating Party  
22 is unwilling to participate in the meet and confer process in a timely manner.

23       6.3   Judicial Intervention. If the parties cannot resolve a challenge without court  
24 intervention, the Designating Party may file and serve a motion to retain confidentiality under  
25 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
26 persuasion in any such motion shall be on the Designating Party. Frivolous challenges, and those  
27

made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge, unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” and, when appropriate, “ATTORNEY’S EYES ONLY,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.



9. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

11. MISCELLANEOUS

11.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any person to seek its modification by the court in the future.

11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1 Dated: April 11, 2022

Respectfully submitted,

2 /s/ Kim D. Stephens

3 Kim D. Stephens, P.S. WSBA #11984

4 /s/ Rebecca L. Solomon

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

Dated this 11th day of April 2022.



Tana Lin  
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of *Dennis E. Davis v. Symetra Life Insurance Company*, Civil Action No. 2:21-cv-00533-TL.  
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_